

MARCEL P. DENIS

D E N I S L A W G R O U P P L L C

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February 14, 2021

Via ECF

Judge LaShann DeArcy Hall
United States District Court Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

**Re: Celestin, et al v. Martelly, et al; Case No. 1:18-cv-07340-LDH-PK
REQUEST FOR JUDICIAL NOTICE**

Dear Judge DeArcy Hall:

Although the Court remains impervious to the plethora of evidence presented by the Plaintiffs that establish beyond reason that Haiti's judiciary lacks competence and independence to impartially adjudicate the matter currently pending before it, nonetheless, the Plaintiffs respectfully request that the Court, pursuant to Federal Rule of Evidence 201 and Fed. Rule Civ. Proc. 44.1, take judicial notice of a recent Presidential Order dismissing three (3) justices from the Supreme Court, highest court in Haiti, in contravention of Article 177 of the Haitian Constitution.

A copy of said Presidential Order and translation is attached hereto as **Exhibit "A."**

Article 177 of the Haitian Constitution reads:

"Judges of the Supreme Court, the Courts of Appeal and the Courts of First Instance are appointed for life. They may be removed from office only because of a legally determined abuse of authority or be suspended following an indictment leveled against them. They may not be reassigned, without their consent, even in the case of a promotion. Their service may be terminated during their term of office only in the event of a duly determined permanent physical or mental incapacity."

Despite the clear language of the Constitution, Mr. Jovenel Moise, whose term “legally ended on February 7, 2021,” made no qualm to issue the attached Order. The three (3) Justices’ dismissal is due solely because their names were placed on a list of potential candidates likely to replace Mr. Moise as “interim President” in the eventuality of a transition. Prior to issuing the unconstitutional decree, Mr. Moise ordered the arrest of Justice Yvikel Dabresil under the guise that he conspired with the United States Department of State to overthrow his government. Justice Dabresil was arrested around 2:30 going on 3 o’clock in the morning of February 8, 2021. The arrest violated the Justice’s constitutional right under Articles 24-2 and 24-3.¹

Justice Dabresil’s arrest was not carried out in keeping with articles 24-2 and 24-3 respectively obligating the accused be served with written notice at the time of his arrest and forbidding arrest from taking “place between six (6) p.m. and six (6) a.m.”. Video footage shows that the Justice was forced to lay on the ground with at least twenty (20) other accused in the wee hours of the morning without a charging instrument. Note that even if there were a charging instrument, it was not issued pursuant to Article 24-2 which requires a charging instrument be issued by a “competent legal” body. Pursuant to Article 186 of the Haitian Constitution², only the

¹ Article 24-2

Except where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legal competent official.

Article 24-3

- a. *It must formally state the reason in Creole and in French for the arrest or detention and the provision of the law that provides for punishment of the act charged.*
- b. *Legal notice must be given, and a copy of the order must be left with the accused at the time of its execution.*
- d. *Except where the perpetrator of a crime is caught in the act, no arrest by warrant and no search may take place between six (6) p.m. and six (6) a.m.*

² Article 186 (d):

The House of Deputies, by a majority of two-thirds (2/3) of its members, shall indict:

House of Deputies can level a charging instrument against a high ranking governmental official like Justice Dabresil; and the only court that can try high ranking officials is the high court comprising of the Senate. Mr. Moise, who failed to host elections as required by the Constitution, disbanded both the House of Deputies and the Senate early in January 2020, and just now obliterated the Judiciary.

Currently, Mr. Moise reigns supreme with unchecked balance of power with his dismissal of the Judiciary and the Parliament. Mr. Moise's egregious acts and conduct, particularly his recent Presidential Order, prompted the Acting Assistant Secretary for the United States Department of State's Bureau of Western Hemisphere Affairs Julie J Chung to state through a tweet that "...*Haiti needs strong, independent courts and an elected legislature.*" A copy of Ms. Chung's tweet is attached hereto as **Exhibit "B."**

The statement issued by Ms. Chung further cements Plaintiffs' legal position that Haiti is far from being the proper forum for adjudicating the matter pending before this Court. If a Justice of the highest court in Haiti is not spared by the arbitrary and capricious acts of the executive, imagine the fate that awaits Plaintiffs.

For the foregoing reasons, Plaintiffs respectfully request that the Court take judicial notice of the unconstitutional Presidential Order issued by Jovenel Moise that abridged the Justices' constitutional right and the statement of the Acting Assistant Secretary for the United States Department of State's Bureau of Western Hemisphere Affairs Julie J Young.

Respectfully submitted,

/S/ Marcel P. Denis

cc: All Counsel of Record via ECF

d. Supreme Court justices and officer of the Public Prosecutor's Office before the Court for abuse of authority.

EXHIBIT “A”

Le Moniteur

SUMMARY

DECREE

- Decree retiring citizens Yvickel Dieujuste DABREZIL, Wendelle Cop THELOT and Joseph Mécène JEAN LOUIS, Justices of the Supreme Court.
- ...

SPECIAL ISSUE

LIBERTY

EQUALITY
REPUBLIC OF HAITI

FRATERNITY

DECREE

RETIRING CITIZENS YVICKEL DIEUJUSTE DABREZIL, WENDELLE COP THELOT AND JOSEPH MECENE JEAN LOUIS, SUPREME COURT JUSTICES

**JOVENEL MOÏSE
PRESIDENT**

Given the Constitution, particularly article 136;

Given the November 13, 2007 Law establishing the Superior Council of the Judiciary;

Given the November 27, 2007 Law on the Statute of the Magistracy;

Given the August 22, 1995 Decree relating to the Organization of the Judiciary;

Given the October 9, 2015 Decree amending that of February 18, 2011 modifying that of October 6, 2004 relating to the Civil Retirement Pension, improving the conditions of Public Servants;

Considering that it is appropriate to invite the citizens Yvickel Dieujuste DABREZIL, Wendelle Cop THELOT and Joseph Mécène JEAN LOUIS, Justices of the Supreme Court, to assert their rights to retirement;

Based on the report of the Minister of Justice and Public Safety;

And on the advice of the Council of Ministers;

DECREE

They are invited to exercise their pension rights.

Article 2.- The present Decree will be printed, published and put into execution forthwith by the Minister of Justice and Public Safety.

Issued at the National Palace, Port-au-Prince, on February 8, 2021, in the 218th Year of Independence.

By:

The President

Jovenel MOÏSE

Prime Minister

Joseph JOUTHE

Minister of Planning and External Cooperation

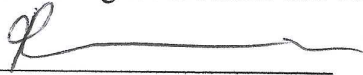
Joseph JOUTHE

Minister of Foreign and Religious Affairs

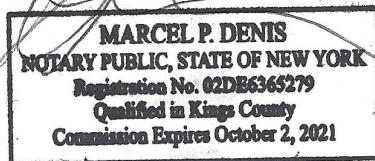
Claude JOSEPH

CERTIFICATION

I, Daniel Dume-Charles, hereby certify that I translated from French into English the attached Decree titled: Le Moniteur-Numéro Spécial: ARRÊTÉ-METTANT À LA RETRAITE LES CITOYENS YVICKEL DIEUJUSTE DABREZIL, WENDELLE COP THELOT AND JOSEPH MECENE JEAN LOUIS JUGES À LA COUR DE CASSATION and that, to the best of my ability, it is a true and correct translation. I further certify that I am competent in both French and English to render and certify such translation.


Daniel Dume-Charles, Translator

Sworn to before me this 13th day of day of February 2021.





Paraissant
du Lundi au Vendredi

JOURNAL OFFICIEL DE LA REPUBLIQUE D'HAÏTI

Directeur Général
Ronald Saint Jean

176^e Année – Spécial N° 9

PORT-AU-PRINCE

Lundi 8 Février 2021

SOMMAIRE

ARRÊTÉS

- Arrêté mettant à la retraite les citoyens Yvickel Dieujuste DABREZIL, Wendelle Coq THELOT et Joseph Mécène JEAN LOUIS, Juges à la Cour de cassation.
- Arrêté autorisant l'implantation à savane Diane, Communes de Saint-Michel de l'Attalaye (Artibonite), Maïssade (Centre), Pignon et Saint-Raphaël (Nord), de la Zone Franche Agro Industrielle d'exportation dénommée : « Zone Franche Agro Industrielle de Savane Diane ».

NUMÉRO SPÉCIAL

LIBERTÉ

ÉGALITÉ

FRATERNITÉ

RÉPUBLIQUE D'HAÏTI

ARRÊTÉ

METTANT À LA RETRAITE LES CITOYENS
YVICKEL DIEUJUSTE DABREZIL, WENDELLE COQ THELOT
ET JOSEPH MECENE JEAN LOUIS
JUGES À LA COUR DE CASSATION

JOVENEL MOÏSE
PRÉSIDENT

Vu la Constitution, notamment son article 136 ;

Vu la Loi du 13 novembre 2007 créant le Conseil supérieur du Pouvoir judiciaire ;

Vu la Loi du 27 novembre 2007 portant Statut de la Magistrature ;

Vu le Décret du 22 août 1995 relatif à l'Organisation judiciaire ;

Vu le Décret du 9 octobre 2015 modifiant celui du 18 février 2011 révisant celui du 6 octobre 2004 sur la pension civile de retraite, améliorant les conditions des Agents de l'Administration publique ;

Considérant qu'il y a lieu d'inviter les citoyens Yvickel Dieujuste Dabrezil, Wendelle Coq Thélot et Joseph Mécène Jean Louis, Juges à la Cour de cassation, à faire valoir leurs droits à la pension civile de retraite ;

Sur le rapport du Ministre de la Justice et de la Sécurité publique ;

Et après avis du Conseil des Ministres ;

ARRÊTE

Article 1^{er}.- Les citoyens Yvickel Dieujuste DABREZIL, Wendelle Coq THÉLOT et Joseph Mécène JEAN LOUIS, Juges à la Cour de cassation, sont mis à la retraite.

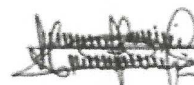
Ils sont invités à faire valoir leurs droits à la pension.

Article 2.- Le présent Arrêté sera imprimé, publié et exécuté aux fins de droit à la diligence du Ministre de la Justice et de la Sécurité publique.

Donné au Palais National, à Port-au-Prince, le 8 février 2021, An 218^e de l'Indépendance.


Par :

Le Président




Jovenel MOÏSE

Le Premier Ministre



Joseph JOUTHE

Le Ministre de la Planification et de la Coopération Externe



Joseph JOUTHE

Le Ministre des Affaires Étrangères et des Cultes



Claude JOSEPH

EXHIBIT “B”

